



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *P. L. v Minister of Employment and Social Development*, 2020 SST 739

Tribunal File Number: GP-20-173

BETWEEN:

**P. L.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

---

Decision by: Pierre Vanderhout

Claimant represented by: Kim Birmingham

Teleconference hearing on: July 7, 2020

Date of decision: July 10, 2020

## **DECISION**

[1] The Claimant is entitled to a Canada Pension Plan (“CPP”) disability pension, to be paid as of August 2019.

## **OVERVIEW**

[2] The Claimant rents a room in a house. He worked as a full-time truck driver from January 2, 2017, to October 31, 2018.<sup>1</sup> Other than a brief attempt in July 2019, he has not worked since then. In April 2019, his family doctor (Dr. Liora Steele) said he was unable to work because of chronic pain syndrome, anxiety spectrum disorder, and chronic obstructive pulmonary disease (“COPD”).<sup>2</sup> The Minister received the Claimant’s application for the disability pension on April 5, 2019. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[3] To qualify for a CPP disability pension, the Claimant must meet the requirements set out in the CPP. More specifically, he must be found disabled (as defined in the CPP) on or before the end of his minimum qualifying period (“MQP”). The MQP calculation is based on his CPP contributions. I find the Claimant’s MQP to be December 31, 2019.

## **ISSUES**

[4] Did the Claimant have a severe disability by December 31, 2019?

[5] If so, did the Claimant also have a prolonged disability by December 31, 2019?

## **ANALYSIS**

[6] Disability is defined as a physical or mental disability that is severe and prolonged.<sup>3</sup> A person is considered to have a severe disability if he is incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is likely to be long continued and of indefinite duration, or is likely to result in death. The Claimant must prove, on a balance of

---

<sup>1</sup> GD2-43.

<sup>2</sup> GD2-72 to GD2-80.

<sup>3</sup> Paragraph 42(2)(a) of the *Canada Pension Plan*.

probabilities, that his disability meets both parts of the test. If he meets only one part, he does not qualify for disability benefits.

**Did the Claimant have a severe disability by December 31, 2019?**

[7] For the reasons set out in the following paragraphs, I find that the Claimant was severely disabled by April 2019.

[8] I must assess the Claimant's condition in its totality. This means I must consider all possible impairments, not just the biggest or main impairment.<sup>4</sup> This is important because he suffers from more than one condition, and they appear to affect each other.

[9] I must also assess the severe part of the test in a real-world context.<sup>5</sup> This means that when deciding whether the Claimant's disability is severe, I must keep in mind factors such as his age, level of education, language proficiency, and past work and life experience. The Claimant was 50 years old at his MQP date. He speaks English fluently. Although he only completed Grade 10, and has failed several attempts to upgrade that, he completed a commercial truck driving course for his Class "A" license in 2016. Reading and spelling are hard for him. Before driving a truck, his two main jobs were installing barn ventilation (5 years) and loading structural steel (12 years). He also worked for brief periods as a roofer, landscaper, carpenter, mover, and concrete labourer. Without considering his medical conditions, I find that the Claimant would only be suited to physical labour or truck driving.

[10] I will now look more closely at the Claimant's medical conditions, and determine whether he has a serious health condition that affected his work capacity.

*Did the Claimant have a serious health condition that affected his work capacity?*

[11] At the hearing, the Claimant testified extensively about his condition at his December 2019 MQP date. His main conditions were chronic pain and anxiety, but he spent more time describing his pain symptoms than his anxiety symptoms. COPD no longer appears to be a problem for him.

---

<sup>4</sup> *Bungay v. Canada (A.G.)*, 2011 FCA 47

<sup>5</sup> *Villani v. Canada (A.G.)*, 2001 FCA 248

[12] The Claimant said he suffered from pain all over his body. His pain level was usually at 8 or 9, on a scale of 0 (no pain) to 10 (worst pain). He always had neck pain, and it “burns like crazy”. This was his primary complaint when he applied for CPP disability benefits.<sup>6</sup> The rest of his pain came and went. His hair got “sore”, and he sometimes could not brush it. His shoulders gave him “lots of grief”. His elbows were very painful, with his right elbow “grinding” a lot. He had wrist and hand pain. His hips burned once in a while. His leg muscles hurt if he walked too much. His knees would sometimes “grind” and “get quite nasty”. His right ankle hurt more than his left, and his foot sometimes “popped out”. His spine hurt if he stood for too long, and he felt a piercing sensation when he sat down. His back burned if he stood for 5-10 minutes. He could sit for longer periods, but it was hard to predict how long. He could not predict when his pain levels would spike. These complaints are broadly consistent with the application he filed in April 2019. He noted that one good day could lead to a few bad days.<sup>7</sup>

[13] The Claimant could lift and carry perhaps 25 pounds for a brief period. He could dress himself, but making his bed was hard and a shower “drained” him so much that he had to lie down. He could do some housework, such as sweeping and laundry, but found it hard to clean the bathroom. He could not cut grass, because the vibrations “kill” his arms. He tried to shovel some snow this past winter, but it “put [me] down for a day”. He found stairs very difficult. He could shop for groceries and prepare meals, although sometimes it was very hard to lift his fork to his mouth. It was sometimes hard to wipe himself after using the toilet. In 2019, he noted significant problems with housework and home maintenance.<sup>8</sup> His sleep depended on “how high I got”. He would sleep well if he passed out. Nabilone helped when he first started taking it.

[14] The Claimant reported that he couldn’t get out of bed for roughly 20 days each month in December 2019. When asked why, he didn’t know. He said he just didn’t want to get up. However, he also mentioned pain shooting through his body. He also continued to suffer from anxiety in December 2019. He gets nervous and angry, and just wants to run away. He had 3-4 panic attacks each day. His 2019 application suggests that his behaviours and emotional abilities were worse than his physical abilities. His communication and thinking abilities were also

---

<sup>6</sup> GD2-35

<sup>7</sup> GD2-38

<sup>8</sup> GD2-41

significantly reduced.<sup>9</sup> At the hearing, he appeared to exhibit ongoing hypochondriasis: he noted his armpit pain and swollen knuckles. Dr. Steele noted similar conditions in April 2019. She also described functional limitations that were similar to what the Claimant described.<sup>10</sup>

[15] The Claimant's evidence was more reliable when he addressed the present or the very recent past. While he had some difficulty with dates, I still found his evidence generally credible. I note that not all of his evidence pointed to an ongoing severe and prolonged disability. For example, he admitted some improvement after 2019 and the ability to perform certain activities of daily living. I conclude that he had a serious health condition by his MQP date that affected his work capacity. I will now decide if he had any work capacity by his MQP date.

*Did the Claimant have any work capacity by his MQP date?*

[16] In a real-world context, I find that the Claimant did not have any work capacity by his MQP date. Timeliness and significant physical demands are essential components of the work he could do. However, he was unable to get out of bed on the majority of days. He also had multiple physical and emotional limitations even when he did emerge. He could not reasonably have maintained any employment under these circumstances. As he had no work capacity, he had a severe disability by his MQP date. I will now determine when his severe disability started.

*When did the Claimant's severe disability start?*

[17] The Claimant's conditions go back many years. In 2014, Dr. Ahmed (Psychiatry) diagnosed the Claimant with an anxiety spectrum disorder and potential fibromyalgia.<sup>11</sup> Dr. Steele also affirmed that his symptoms went back to 2014.<sup>12</sup> However, simply having medical conditions does not establish a severe disability. I have to look at his work capacity at the relevant times, including his work and earnings history.

[18] I cannot find that the Claimant had a severe disability before he stopped working in October 2018. I see no medical evidence between December 2015 and October 2018, other than a single spine X-ray in July 2018. The Claimant admitted that he moved out of the region during

---

<sup>9</sup> GD2-39 and GD2-40

<sup>10</sup> GD2-76 and GD2-77

<sup>11</sup> GD2-88

<sup>12</sup> GD2-79

this time and did not receive any medical care until 2018. He completed an intensive truck driving program in 2016. The course took eight hours per day and lasted for six weeks. He also worked full-time from January 2017 to the end of October 2018, with earnings that were roughly three times the “substantially gainful” level.<sup>13</sup> At the hearing, he said he didn’t miss any work. However, by the end, he was getting “written up” by his employer. The evidence suggests a rapid drop in his work capacity around the time he stopped working in 2018. Finally, in his application, he said he could no longer work in October 2018.<sup>14</sup>

[19] In April 2019, Dr. Steele said the Claimant was unable to return to work as of November 7, 2018, right after he stopped driving a truck.<sup>15</sup> It is not clear if she considered his ability to work at other jobs. Dr. Steele seems to have considered the Claimant’s “real-world” capacity when she completed the April 2019 report, as she commented on his limited education.<sup>16</sup>

[20] In his 2019 application, the Claimant said his condition was getting worse. However, it is not clear if that only applied up to October 2018, or if it also applied to later months. Furthermore, while he dated the application on January 22, he did not file it until April 5.<sup>17</sup>

[21] Finally, I see few, if any, medical documents between November 9, 2018, and April 1, 2019.<sup>18</sup> In his early 2019 application, the Claimant said he was not taking any medication or getting any treatment.<sup>19</sup> He only began to see “Joe”, a counsellor, again in the summer of 2019.<sup>20</sup>

[22] I find it likely that the Claimant was incapable regularly of pursuing any substantially gainful occupation by April 2019. The onus is on him to prove he meets the statutory requirements. The lack of evidence, for roughly 5 months, prevents a finding of severity before April 2019. However, based on the evidence from him and Dr. Steele, I accept that he has been severely disabled since then. As I see no medical evidence after his MQP date, I rely on his oral

---

<sup>13</sup> GD2-5. Since 2014, section 68.1 of the *Canada Pension Plan Regulations* has defined “substantially gainful” as the maximum annual amount that a person could receive as a CPP disability pension. In 2018, this was \$16,039.96.

<sup>14</sup> GD2-35

<sup>15</sup> GD2-79 (top of the page).

<sup>16</sup> GD2-79 (bottom of the page).

<sup>17</sup> See the bottom of each page from GD2-38 to GD2-41.

<sup>18</sup> GD2-101 and GD2-72.

<sup>19</sup> GD2-35 to GD2-36.

<sup>20</sup> This appears to be the same counsellor mentioned by Dr. Steele in her April 2019 report, at GD2-77.

evidence to conclude that his severe disability lasted until the hearing date. I will discuss this evidence in more detail later, when I look at whether his disability is also prolonged.

[23] Even if the Claimant had work capacity in July 2019, I find that his failed return to truck driving (for his previous employer) is consistent with a severe disability. Where there is evidence of work capacity, a person must show that efforts at obtaining and maintaining employment have been unsuccessful because of his health condition.<sup>21</sup> This is what happened. The Claimant only lasted two days. He said his body hurt in all the same areas. His feet swelled, and he was sick to his stomach because of the pain in his neck, shoulders and elbows. He felt confused. He said he was in bed for two days after his work attempt. He did not even have the strength to open the patio door. I find his failure to continue persuasive, given how easy he found the job.

[24] I will now look at some submissions from the Minister that the above analysis may not completely address.

*Other submissions from the Minister*

[25] The Minister saw no severe pathology to explain the Claimant's chronic pain.<sup>22</sup> I agree with this observation. However, the Claimant's disability could still be severe anyway. Chronic pain is very difficult to measure objectively. Dr. Steele clearly endorsed the presence of a chronic pain syndrome, and relied on it when determining that the Claimant would not likely be able to maintain a job.<sup>23</sup> I also found the Claimant's reports of pain to be believable, although there appears to be no physical explanation for it.

[26] The Minister noted that the Claimant was not taking any medications in September 2019.<sup>24</sup> At the hearing, the Claimant said pills made him feel "skinny and gross". However, he now realizes that he needs to take them "to be normal". He now takes Cymbalta (Duloxetine) and Nabilone regularly. He thought he started taking medication again in July or August 2019, but was not sure of the date. He did not tolerate Gabapentin. Dr. Steele also identified problems

---

<sup>21</sup> *Inclima v. Canada (A.G.)*, 2003 FCA 117

<sup>22</sup> GD6-8 and GD6-13.

<sup>23</sup> GD2-76 and GD2-79.

<sup>24</sup> GD6-9 and GD3-2

with medications such as Cipralex. While the Claimant did not take medication consistently in April 2019, Dr. Steele said he could not afford Cymbalta.<sup>25</sup>

[27] When an applicant does not follow treatment recommendations, such as taking medication regularly, I need to determine whether that failure is reasonable.<sup>26</sup> In the Claimant's context, I find that his 2019 failures were unfortunate but still reasonable. Dr. Steele mentioned economic strain more than once in her CPP report<sup>27</sup>, and medication cost issues appear to have been present since at least 2014.<sup>28</sup> The Claimant currently relies on a food bank and the kindness of his landlord. I cannot fault him for not taking medication due to poverty. His anxiety issues also appear to complicate his medication use. As a result, I find that the Claimant's prior irregular use of medication does not prevent a finding of severity.

[28] Finally, the Minister suggested that the Claimant did not attend the Chronic Pain Management Program to which he was referred in November 2018.<sup>29</sup> At the hearing, the Claimant said he did attend a six-week program for pain management last summer in London. He found it somewhat helpful, but stressed that it just helped him to manage his pain. As he attended the recommended program, this does not affect my findings on severity either.

### **Did the Claimant also have a prolonged disability by December 31, 2019?**

[29] The Claimant has not suggested that his disability will result in death, nor does any of the medical evidence suggest this. This means his disability is only prolonged if it is likely to be long continued and of indefinite duration.

[30] In April 2019, Dr. Steele said the Claimant's chronic pain condition and anxiety spectrum disorder were likely to remain the same in the future and would last for more than a year.<sup>30</sup> Although his COPD does not currently contribute to his disability, Dr. Steele expected it to deteriorate. She was not optimistic about his ability to maintain employment.<sup>31</sup>

---

<sup>25</sup> GD2-76 and GD2-77

<sup>26</sup> *Lalonde v. Canada (MHRD)*, 2002 FCA 211.

<sup>27</sup> GD2-76 and GD2-79

<sup>28</sup> GD2-64, GD2-65, and GD2-89.

<sup>29</sup> GD2-79 and GD6-9.

<sup>30</sup> GD2-76 and GD2-77

<sup>31</sup> GD2-78 and GD2-79



[31] The Claimant's evidence is consistent with Dr. Steele's conclusions. He said he could not work at any of his past jobs now. He is tired and has no strength. He has to lie down for naps two or three times each day. He still gets dizzy and loses focus. His neck pain, which would considerably interfere with his ability to drive, is still there all the time. He cannot turn his head, check his mirrors, or use a standard gear shift. The rest of his pain continues to come and go. His jaw is a new area of pain, and his right wrist hurts more than before.

[32] The overall intensity of the Claimant's pain appears to have eased since his MQP date. He said the intensity now usually ranges from 5 to 8 out of 10. He has about 10 good days per month, when his pain might be only 3 or 4 out of 10. However, on bad days, his pain can reach 8 or 9 out of 10. He said he is unable to get out of bed for 10-15 days each month, which is a slight decrease from his MQP date. However, his functional capacities, such as his capacity for lifting and carrying, have not changed much. His anxiety is the same, but his panic attacks have declined to 10-15 per week. He says this is because he is in a quiet environment.

[33] While the Claimant has improved slightly since his MQP date, he remains significantly impaired. Given his complex issues, and the nature of chronic pain, I do not expect a significant improvement in the near future. On a balance of probabilities, I find that his disability is likely to be long continued and of indefinite. This means his disability is prolonged. Furthermore, given Dr. Steele's April 2019 prognosis, I find that his disability has been prolonged since that date.

## **CONCLUSION**

[34] The Claimant had a severe and prolonged disability in April 2019. Payments start four months after the date of disability, as of August 2019.<sup>32</sup>

[35] The appeal is allowed.

Pierre Vanderhout  
Member, General Division - Income Security

---

<sup>32</sup> Section 69 of the *Canada Pension Plan*.